

"Last week, Americans watched a negotiation over \$38.5 billion in spending cuts play out under the looming shadow of a federal government shutdown. This week, the House of Representatives has moved the discussion from billions to trillions with consideration of the federal budget for Fiscal Year 2012. Still, last week offered Americans an interesting insight into its priorities.

Should the federal government ever shut down, and it has several times in the past, federal employees are basically divided into two groups: those deemed essential and those who are not permitted to work if the government should shut down.

Those "essential" government employees must satisfy one of three tests: they must be essential to protecting life and the public safety; they must be essential to protecting property; or they must be essential to discharging constitutional duties. In the executive branch, the President makes the determination as to who is essential and who is not.

For instance, the issuance of Social Security checks is important to protecting senior citizens who rely on their benefits to meet basic needs, so federal employees would be retained to make sure benefits would be paid. Likewise, FBI agents and members of our military are essential to protecting lives, so they would stay on the job. Finally, the President's powers in foreign diplomacy are expressly laid out by the Constitution, so vital functions of the U.S. State Department would continue.

But as each federal agency posted its contingency plan to maintain essential functions during a possible federal government shutdown, the plan at the U.S. Department of Health and Human Services raised a few eyebrows, including mine. Their plan said: "Operations of the Center for Consumer Information and Insurance Oversight could continue as funding was provided through the Affordable Care Act. This includes insurance rate reviews, assessment of a portion of insurance premiums that are used on medical services, establishment of exchanges, operation of the pre-existing condition insurance program and the early retiree reinsurance program."

In effect, though the operation of the federal government had reached an impasse requiring more than 80 percent of federal employees to be sent home without pay, Obamacare would continue uninterrupted as scheduled. Many of the functions of this particular new office aren't

even relevant until 2014 – three years from now. Surely they, too, could have been spared for a few days while the budget for 2011 was sorted out.

Whenever we establish bureaucracies that end up being greater than the government of which they are meant to be a part, Americans should be extremely concerned about their abilities to control those functions of government. The Obama health care law functions as though it is "essential." The Center for Consumer Information and Insurance

Oversight continues on unaffected by the plight of taxpayers or the debt faced by our grandchildren. This single brand-spanking-new entity at the U.S. Department of Health and Human Services even has its own \$1 billion budget so it can weather the storm of any fiscal struggles the rest of the nation may face.

Tone-deaf bureaucracy, heavy-handed regulation, and this new form of indestructible, "essential" government are the clearest signs yet that we must set right the principles of accountability and austerity in Washington, DC."